

October 24, 2019

## Memorandum

**To:** Members, Committee on Financial Services  
**From:** FSC Majority Staff  
**Subject:** October 29, 2019, Oversight and Investigations Subcommittee hearing entitled “Financial Services and the LGBTQ+ Community: A Review of Discrimination in Lending and Housing”

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The Subcommittee on Oversight and Investigations will hold a hearing entitled “Financial Services and the LGBTQ+ Community: A Review of Discrimination in Lending and Housing,” on Tuesday, October 29, 2019, at 10:00 a.m. The witnesses are:

- **Harper Jean Tobin**, Director of Policy, National Center for Transgender Equality
- **Michael Adams**, CEO, SAGE (Services and Advocacy for GLBT Elders)
- **Kerith Conron**, Research Director, Williams Institute, UCLA School of Law
- **Alphonso David**, President, Human Rights Campaign
- **Hua Sun**, Professor, Iowa State University
- **Francis Creighton**, President and CEO, Consumer Data Industry Association

### Overview

This hearing will focus on the extent and effects of discrimination against persons who identify as lesbian, gay, bisexual, transgender or queer (“LGBTQ+”)<sup>1</sup> when seeking housing or credit in the United States. The testimony will examine the relevant data that are currently available to inform policy makers regarding the nature and scope of such discrimination.

### Economic Insecurity Among LGBTQ+ Americans

LGBTQ+ discrimination in lending and housing can best be understood against the backdrop of the economic insecurity confronting LGBTQ+ communities. According to a recent analysis by Prudential,<sup>2</sup> LGBTQ persons have fewer financial resources overall, including lower incomes, utilization of basic banking products, and ownership of financial assets (such as retirement accounts), relative to non-LGBTQ respondents. For example, half of LGBTQ respondents had household incomes below \$50,000, while the median household income of non-LGBTQ respondents was nearly \$70,000. The share of respondents with very low incomes (*i.e.*, below \$30,000) was 40% of LGBTQ women, 35% of LGBTQ men, and just 24% of both non-LGBTQ men and women.

Further, only half of LGBTQ respondents owned a basic banking product such as a checking, savings,

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<sup>1</sup> “LGBTQ+” is used here to refer to the broader community at its most inclusive, encompassing those identifying as lesbian, gay, bisexual, transgender, queer, questioning, intersex, asexual, pansexual, etc. For precision, however, where a study or other source material is referenced, the acronyms used herein comport with the acronyms utilized in the source material, *e.g.*, “LGB” for a group comprised of lesbian, gay, and bisexual persons that does not include transgender persons; “LGBT” for lesbian, gay, bisexual, and transgender persons exclusive of queer individuals; and “LGBTQ” for solely lesbian, gay, bisexual, transgender, and queer persons.

<sup>2</sup> *The Cut – Exploring Financial Wellness within Diverse Population* (2018). Prudential surveyed over 3,000 Americans, age 25 to 70, to better understand factors that can impede the ability to achieve financial security.

or money market account, while two-thirds of non-LGBTQ respondents owned at least one such product. Only 27% of LGBTQ respondents had an employer-sponsored retirement savings account such as a 401(k), compared with 41% of non-LGBTQ respondents. Just 21% had an individual retirement account, versus 32% of non-LGBTQ respondents. Fully 55% of LGBTQ respondents were found to have zero retirement savings, compared to 42% of the general population with nothing saved for retirement. The report noted obstacles unique to this population, such as a lack of universal protection against job discrimination, unequal access to benefits for same-sex partners, and lack of family support. Wage inequality due to discrimination was identified as a barrier to financial success by 13% of LGBTQ respondents and by 8% of non-LGBTQ respondents.<sup>3</sup> Additionally, gay men and racial minority lesbians were found to have lower rates of homeownership and lower personal incomes.<sup>4</sup>

LGBTQ+ persons of color face the greatest economic hardships. A recent report found the highest rates of adults living in poverty are among transgender people of color: 38% of Black transgender adults; 43% of Latinx transgender adults; 41% of Native American transgender adults; and 32% of Asian-American/Pacific Islander (“AAPI”) transgender adults.<sup>5</sup> For context, only 14% of white, non-LGBT adults live in poverty. Similarly, LGB adults who are Black or AAPI live in poverty at rates higher than non-LGB adults of the same race: 36% of Black LGB adults vs. 29% of Black non-LGB adults; 17% of AAPI LGB adults vs. 14% of AAPI non-LGB adults. Poverty rates are actually slightly lower among LGB Latinx (34% v. 36%) and Native Americans (30% vs. 32%) than among heterosexuals of the same race.<sup>6</sup>

### **Lack of Legal Protections for LGBTQ+ Americans**

There are no applicable state law protections against housing discrimination in 28 states, where the majority of LGBTQ+ persons (52%) reside. Nor are there state laws barring credit discrimination against LGBTQ+ borrowers in 35 states and DC. At the federal level, there are no fair housing or credit protections based expressly on sexual orientation or gender identity. In a trilogy of cases now before the Supreme Court, the Justices soon will decide whether federal laws prohibiting sex-based employment discrimination protect LGBTQ+ persons. Depending on the scope of the holdings in those cases, legal observers expect that there may be implications for other federal statutes that also bar sex-based discrimination, such as the Fair Housing Act (“FHA”) and Equal Credit Opportunity Act (“ECOA”).<sup>7</sup> In May 2019, the House passed HR 5, the Equality Act, which would expressly add sexual orientation and gender identity to ECOA and the FHA.

Under Director Cordray, the Consumer Financial Protection Bureau (“Consumer Bureau”) adopted the position that ECOA’s prohibition on sex discrimination, which the Consumer Bureau is responsible for administering and enforcing, affords broad protection against credit discrimination on the bases of gender identity and sexual orientation.<sup>8</sup> Among the senior leaders at the Consumer Bureau with

<sup>3</sup> *Id.* at 10-11.

<sup>4</sup> Conron, KJ, *et al.*, *Sexual orientation and sex differences in socioeconomic status*, J. Epidemiol Community Health, 72: 1016-1026 (2018) (App. A). Researchers often must rely upon health data sets due to the dearth of other comprehensive data sets containing socioeconomic measures regarding LGBTQ+ persons.

<sup>5</sup> Movement Advancement Project, *Where We Call Home: LGBT People of Color in Rural America* (Sept. 2019), summarizing data from National Center for Transgender Equality, *2015 U.S. Transgender Survey* (“USTS”) (2016) and Williams Institute, *LGBT Demographic Data Interactive* (Jan. 2019).

<sup>6</sup> *Id.*

<sup>7</sup> *Bostock v. Clayton County*, No. 17-13801 (11<sup>th</sup> Cir. 2018); *Altitude Express Inc. v. Zarda*, No. 15-3775 (2d Cir. 2018); *Harris Funeral Homes v. EEOC*, No. 16-2424 (6<sup>th</sup> Cir. 2018).

<sup>8</sup> [Letter](#) from CFPB Director Cordray to Michael Adams, CFO, and Aaron Tax, Director of Government Relations, Services and Advocacy for GLBT Elders (Aug. 30, 2016). Since Director Cordray’s departure, it is not clear whether the Consumer Bureau has maintained its view that ECOA prohibits gender-identity and sexual-orientation-based discrimination.

responsibilities relating to ECOA compliance is Paul Watkins, who was appointed by Acting Director Mulvaney in 2018, after serving for three years as senior counsel to the “Alliance Defending Freedom,” a designated anti-LGBTQ+ hate group.<sup>9</sup> According to the Consumer Bureau’s June 2019 [Fair Lending Report](#),<sup>10</sup> in 2018 *none* of the eleven ECOA enforcement agencies brought any public enforcement actions for violations of ECOA, down from a high of 26 such cases in 2013. Only one case under ECOA (for marital status discrimination) was referred to DOJ by any of the federal agencies with ECOA jurisdiction, down from eleven referrals in 2018 and 20 in 2016.

The U.S. Department of Housing and Urban Development’s (“HUD”) [Equal Access Rule](#) provides protections for certain housing programs, including mortgages insured by the Federal Housing Administration. HUD issued two rules to provide equal access to housing without regard to sexual orientation, gender identity, or marital status. The first, issued in 2012, provides protections in all HUD programs, and the second, issued in 2016, focuses on Community Planning and Development programs, particularly requirements for homeless services providers. The 2016 rule provides that placement in facilities with shared sleeping and/or bath accommodations (such as homeless shelters) occur in conformance with a person's gender identity. The Trump administration has proposed gutting the Rule, by allowing federally-funded shelter and service providers to deny admission to transgender individuals based on their gender identity for a variety of reasons, including religious beliefs and an individual’s sex as reflected in government documents. It is in this context that HUD Secretary Ben Carson recently referred to transgender women as “big, hairy men,” seeking to infiltrate women’s shelters.<sup>11</sup>

### **Data on LGBTQ+ Discrimination in Housing and Lending**

In a 2017 survey of 3,400 LGBTQ adults,<sup>12</sup> respondents reported discrimination across multiple contexts, including renting or buying a home, being paid or promoted equally, and voting, with discrimination most prevalent among LGBTQ people of color. Most LGBTQ people reported personally experiencing slurs (57%) or offensive comments (53%) about their sexual orientation or gender identity (“SOGI”). The survey found that 22% of respondents had experienced SOGI-based discrimination when trying to rent or buy a house.

Additionally, 35% of transgender people said that other transgender people where they live are discriminated against when trying to rent or buy a home, and 22% had been told or felt they would be unwelcome in a neighborhood or building because they are transgender.<sup>13</sup> In another 2017 survey of

<sup>9</sup> See [Letter](#) from Sen. Warren, Rep. Porter, and Rep. Pressley to CFPB Director Kraninger (June 25, 2019).

<sup>10</sup> [Fair Lending Report of the Bureau of Consumer Financial Protection](#) (2019). The Office of “Fair Lending’s focus on fair, equitable, and nondiscriminatory access to credit for individuals and communities provides for synergy with the work of the Office of Innovation,” which Mr. Watkins heads. *Id.* at 9. The office was created in 2018 to lead the Bureau’s efforts to “prioritiz[e] innovation in part to help expand fair, equitable and nondiscriminatory access to credit to underserved populations. *Id.* Shortly after Mr. Watkins joined the Bureau, the CFPB proposed policies that conferred on his office authority to exempt certain fintech companies from complying with laws such as ECOA. [Policy on No-Action Letters and the BCFP Product Sandbox](#), CFPB Proposed Rule, 83 FR 64036 (Dec. 13, 2018). Under his leadership, CFPB proposed giving companies a safe harbor from liability, through which they would be “immune from enforcement actions by any Federal or State authorities.” *Id.* at 64042. According to the National Consumer Law Center, if finalized, these policies “would permit exemptions from provisions of the laws governing mortgages, credit cards, and other forms of lending” and from “fair lending laws that prohibit discrimination.” NCLC, [Consumer Bureau's Shocking New "No Consumer Protection" Policy](#) press release (Dec. 11, 2018). Thus, under the proposal he designed, Mr. Watkins has responsibility for granting such exemptions from ECOA and other antidiscrimination laws.

<sup>11</sup> Washington Post, [HUD Secretary Ben Carson makes dismissive comments about transgender people, angering agency staff](#) (Sep. 19, 2019). He has referred to transgender people as “abnormal” and said they should not serve in the military.

<sup>12</sup> NPR, Robert Wood Johnson Foundation, & Harvard T.H. Chan School of Public Health, [Discrimination in America: Experiences and Views of LGBTQ Americans](#) (Nov. 2017).

<sup>13</sup> *Id.* at 1-2, 27.

LGBT adults,<sup>14</sup> LGBT people reported making significant life choices – with the aim of avoiding discriminatory treatment and harassment – about where to live (19.1%), work (13%), shop (18%), and go to school (8%), with rates substantially higher for those who experienced prior-year discrimination.

The 2015 [U.S. Transgender Survey](#) (“USTS”) is the largest sample ever of transgender adults (almost 28,000 persons in 50 states; Washington, DC; U.S. territories; and overseas U.S. military bases). The USTS found that 23% of transgender adults experienced some form of housing discrimination and/or instability in the previous year as a result of being transgender, including homelessness (12%), eviction (5%), denial of housing (6%), and having to move in with friends or family. Strikingly, nearly a third of transgender adults (30%) reported having been homeless at some point in their lifetime. Among those who were homeless in the past year, 26% did not seek shelter due to fear of being mistreated, and 6% were denied access to a shelter, 74% of whom were denied due to gender identity. Of those who stayed in a shelter, most (52%) had been verbally harassed, physically attacked, or sexually assaulted in the shelter; 44% left due to poor treatment or unsafe conditions, despite having nowhere else to go; many dressed as the wrong gender, either to feel safe (25%) or due to shelter requirements (14%); and 9% were thrown out of shelter upon revealing their gender identity.<sup>15</sup>

### **Mortgage Lending Discrimination**

Research published in April 2019 found significant and costly discrimination in mortgage lending to LGBTQ+ borrowers.<sup>16</sup> Researchers analyzed Home Mortgage Disclosure Act (“HMDA”) data for 1990-2015 and data from the Federal Reserve Bank of Boston and found that same-sex mortgage co-applicants: (1) were 73.12% more likely to be denied a loan than different-sex co-applicants with similar characteristics, a pattern that persisted over the time period covered; and (2) paid higher fees and interest (2 to 20 basis points more, which is equal to \$8.6 million to \$86 million nationwide every year). In 2013, HUD found that Bank of America violated its Equal Access Rule by discriminating against a mortgage applicant on the basis of sexual orientation. The applicant had listed her same-sex partner’s mother as co-signer, a relationship which the bank said was not recognized. Bank of America paid a \$7,500 fine to resolve the matter.

### **Rental Housing Discrimination**

A paired-test, in-person study, funded by HUD and conducted in the Dallas-Fort Worth, Los Angeles, and Washington, DC metropolitan areas, found evidence of rental housing discrimination against same-sex couples and transgender people.<sup>17</sup> Gay men were told about one less available rental unit than heterosexual men for every 4.2 tests. Providers were less likely to schedule an appointment with gay men and quoted gay men average yearly costs \$272 higher than the costs quoted to heterosexual men. Housing providers told transgender testers about fewer units than they told cisgender testers, regardless of whether transgender identity was disclosed. When it was disclosed, testers were 11% less likely than cisgender testers to be told of any available units.<sup>18</sup> A [2018 paper](#) presents evidence from a series of matched-pairs

<sup>14</sup> Center for American Progress, *Widespread Discrimination Continues to Shape LGBT People’s Lives in Both Subtle and Significant Ways* (May 2017).

<sup>15</sup> USTS, at 176.

<sup>16</sup> Proceedings of the National Academy of Sciences, *Lending Practices to Same Sex Borrowers*, Hua Sun and Lai Goa, Ivy College of Business, Iowa State University, Apr. 2019 (App. B); see NBC News, *Same-sex borrowers 73% more likely to be denied mortgage, study finds*, Apr. 18, 2019 (“Despite being ‘less risky overall,’ same-sex borrowers are less likely to get a mortgage. When they are approved, they face higher interest.”); see also Mark Fogarty, *HMDA Data Offers Clues on Discrimination Against Gays*, June 9, 2014.

<sup>17</sup> Urban Institute, *A Paired-Testing Pilot Study of Housing Discrimination against Same-Sex Couples and Transgender Individuals* (June 2017); see also HUD, *An Estimate of Housing Discrimination Against Same-Sex Couples* (June 2013).

<sup>18</sup> *Id.* at xiii-xiv.

tests in the metro Boston rental housing market and found that transgender and gender non-conforming (“TGNC”) people were discriminated against 61% of the time; were 27% less likely to be shown areas of the apartment complex; 21% less likely to be offered a financial incentive to rent; 12% more likely to be told negative comments about the neighborhood; and 9% more likely to be quoted a higher rental price than people who were not transgender.<sup>19</sup>

### **Housing Discrimination Against Elder LGBTQ+ Persons**

Older LGBTQ+ persons report “trepidation” about senior housing options, with concerns including discrimination, affordability, and availability.<sup>20</sup> These concerns are based on research showing that older LGBTQ+ adults often face discrimination when seeking rental, subsidized, or long-term care housing. A study by the Equal Rights Center and SAGE found that 48% of older same-sex couples applying for senior housing experienced discrimination. Adverse treatment included providing LGB persons fewer options for housing; quoting higher fees or rental prices, and/or requiring a more extensive application; providing less information on financial incentives; and providing information only about two-bedroom rentals. In addition, 12.5% of testers encountered multiple forms of adverse treatment.<sup>21</sup>

AARP’s survey found that 34% of LGBT adults and 70% of gender-expansive respondents were concerned about having to hide their identity in order to access suitable housing, such as long term care, as they age.<sup>22</sup> The highest rates of recent housing discrimination were reported by Black (13%) and gender expansive (14%) respondents. Black and Latinx LGBT respondents reported more concerns about multiple forms of discrimination as they age, with 37% of Black LGBT respondents and 25% of Latinx LGBT respondents being very concerned about abuse in long-term care. The majority (63%) were very or extremely interested in living in an LGBT-welcoming housing development.

### **Identity Documents and Access to Credit**

TGNC persons who wish to apply for credit must first navigate a series of legal, administrative, financial, and bureaucratic obstacles to update their identity documents with the appropriate name and gender marker.<sup>23</sup> The 2015 USTS found that 67% of respondents lacked *any* ID reflecting their correct gender identity, and only 9% of those who sought to change the gender marker on their birth certificate were able to do so. The survey also found that 32% reported problems when presenting identification that did not match their presentation, such as harassment, attack, or denial of services.<sup>24</sup> In one case,<sup>25</sup> a loan officer refused to provide a transgender applicant with a loan application unless she went home to change and return in more traditionally masculine clothing. While the applicant in that case was able to pursue a sex discrimination claim against the lender under ECOA, the case illustrates the potential barriers faced by TGNC borrowers.

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<sup>19</sup> *Transcending Prejudice: Gender Identity and Expression-Based Discrimination in the Metro Boston Rental Housing Market*, 29 YALE J.L. & FEMINISM 321, at 322, 337 (2018).

<sup>20</sup> N. J. Knauer, *LGBT Elder Law: Toward Equity in Aging*, 32 Harvard L. J. 301, 316 (2009).

<sup>21</sup> Equal Rights Center, *Opening Doors: An Investigation of Barriers to Senior Housing for Same-Sex Couples* (2014).

<sup>22</sup> *Maintaining Dignity: Understanding and Responding to the Challenges Facing Older LGBT Americans* (Mar. 2018). The survey polled persons in 50 states and intentionally oversampled gender-expansive persons, *i.e.*, those identifying as transgender, non-binary, intersex, genderqueer, and gender fluid.

<sup>23</sup> Changing the name on a state or federal ID typically involves obtaining a legal name change from a court. Changing the gender marker listed on most IDs and records generally requires documentation of gender transition from a health provider.

<sup>24</sup> USTS, at 89-90.

<sup>25</sup> *Lucas Rosa v. Park West Bank and Trust Co.*, 214 F.3d 213 (1<sup>st</sup> Cir. 2000).